

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KRISTIN A. CARMODY, M.D.,
M.H.P.E.

Plaintiff,

v.

Case No:

NEW YORK UNIVERSITY; NYU

1:21-cv-08186-LGS

GROSSMAN SCHOOL OF MEDICINE;

NYU LANGONE HOSPITALS; ROBERT I.

GROSSMAN, M.D.; FRITZ FRANCOIS,

M.D.; STEVEN B. ABRAMSON, M.D.;

ANDREW W. BROTMAN, M.D.; and

ROBERT J. FEMIA, M.D.

Defendants.

VIDEOTAPED DEPOSITION

WITNESS: Robert J. Femia, M.D.

DATE: Tuesday, February 14, 2023

START TIME: 2:00 p.m.

END TIME: 3:08 p.m.

REPORTED BY: Kimberly Rawls, CER-1944, Notary Public

JOB No.: 14800

Conducted by videoconference via the Remote Legal
platform.



REMOTE LEGAL
COURT REPORTING

646-461-3400

1 right hand? Thank you, sir.

2 Do you swear or affirm that the testimony
3 you shall give today in this proceeding will be the
4 truth, the whole truth, and nothing but the truth?

5 DR. FEMIA: Yes, I do.

6 WHEREUPON,

7 R O B E R T F E M I A

8 having been called as a witness, being duly sworn by the
9 notary public present, testified as follows:

10 THE DIGITAL REPORTER: Thank you very
11 much. I appreciate that. Counsel, you may begin.

12 MR. CAVALERI: Great. Thank you.

13 EXAMINATION

14 BY MR. CAVALERI:

15 Q Welcome back, Dr. Femia. Thank you for your
16 time this afternoon.

17 I want to start by asking when were you first
18 asked whether you had any text messages on your phone
19 that were related to this case?

20 A When was I first asked? I believe it was
21 after we received the notice of an intent to sue.

22 Q What date was that? Do you recall the month?

23 A It was in April.

24 Q April of 2021; is that correct?

25 A Yes.



1 Q And at that point, what did you do with
2 respect to the question of whether you had text
3 messages on your phone?

4 A I was asked to review if there were any text
5 messages and to not delete anything.

6 Q And what did you do in response to that
7 request?

8 A I searched my phone to look for any text
9 messages that might be on there in regards to the
10 matter.

11 Q And as part of that review, did you locate any
12 text messages related to this matter?

13 A No.

14 Q And what did you search for -- withdrawn.
15 How did you determine whether something was
16 related to this matter?

17 A My attorneys gave me the names that I should
18 be searching for and I followed their direction.

19 Q How did you search for the names -- withdrawn.
20 Let me be more clear.

21 Did you look for text messages with those
22 individuals that were referenced by your attorneys?

23 A Yes.

24 Q Okay. And did you locate any text message
25 conversations with those individuals that they

1 referenced?

2 A No.

3 Q Did those names referenced include Dr.
4 Carmody?

5 A Yes.

6 Q And as of April 21, you did not have any text
7 messages with Dr. Carmody on your phone; is that
8 correct?

9 A Yes.

10 Q Okay. At any point prior to April of 2021,
11 did you have text messages with Dr. Carmody on your
12 phone?

13 MR. CERASIA: Objection to form.

14 You can answer.

15 THE WITNESS: I would have, yes.

16 BY MR. CAVALERI:

17 Q Okay. And what happened to those text
18 messages?

19 A As a matter of routine they were deleted.

20 Q What do you mean as a matter of routine, Dr.
21 Femia?

22 A I didn't -- I don't -- I did not save text
23 messages. My routine as practice was to every few weeks
24 just delete my messages.

25 Q So, Dr. Femia, is it your testimony that you



1 would actively delete text messages on your phone every
2 few weeks?

3 A Yes.

4 Q And would you delete all text messages on your
5 phone every few weeks?

6 A Usually, yes.

7 Q And what is the purpose of deleting text
8 messages every few weeks from your phone?

9 A Just clean up clutter.

10 Q Do you ever save text messages on your phone,
11 Dr. Femia?

12 A Have I ever saved a text message? Yes.

13 Q What text messages do you save on your phone?

14 A The types of messages that I would want to
15 maybe refer back to, something that I might want to
16 share.

17 Q Would that include text messages with -- that
18 are related to your professional responsibilities?

19 A I -- I did not save any text messages if
20 you're referring to any specific. I'm talking as far as
21 a generic practice. I think your question was, have I
22 ever saved a text message? Well, of course, yes. If
23 you mean did I -- do I immediately delete them? No.

24 Q Dr. Femia, how long have you maintained this
25 practice of deleting text messages every few weeks?

1 A I have no idea when that actually started,
2 probably years ago but I don't, as a matter of routine,
3 save text messages on my phone for long periods of time.

4 Q How long after Dr. Carmody's termination did
5 you delete your text messages with her?

6 MR. CERASIA: Objection to form.

7 You can answer.

8 THE WITNESS: I don't specifically recall
9 when I deleted her text messages. I can tell you that
10 from that date in December right up until the notice
11 that there was potentially a suit, I would have been
12 deleting message throughout that time period.

13 BY MR. CAVALERI:

14 Q Well, would you have deleted text messages
15 with Dr. Carmody within a week of her termination?

16 A What -- would I have?

17 Q Yes.

18 A I can't -- I -- I don't know exactly when
19 these messages came -- were deleted specifically to Dr.
20 Carmody or specifically to anyone else, but knowing that
21 I would routinely delete messages frequently, I would
22 guess that sometime in December, yes, I would have, my
23 best guess, I deleted messages.

24 Q When you delete text messages every few weeks,
25 do you sit there and just - how do you -- take me

1 through that process of how you go about deleting your
2 text messages every few weeks?

3 A I swip and hit the delete button.

4 Q What kind of phone do you have, Dr. Femia?

5 A An iPhone.

6 Q Did you have the same iPhone in December of
7 2020 that you have today?

8 A Yes.

9 Q What kind of iPhone do you have?

10 A I don't know.

11 Q But you have not -- you have not purchased a
12 new phone since December 2020; is that correct?

13 A I don't think so, no.

14 Q Do you have an Apple computer as well?

15 A Do I have an Apple computer? Yes.

16 Q Okay. And you have an iPad?

17 A No.

18 Q Does your Apple computer sync up to your Apple
19 iCloud account?

20 MR. CERASIA: Objection to form.

21 You can answer.

22 THE WITNESS: Yes. I believe so, yes.

23 BY MR. CAVALERI:

24 Q Okay. And did you delete your text messages
25 from your Apple computer as well as your Apple phone?

